



INTERIOR BOARD OF INDIAN APPEALS

Estate of Arnita Lois Parton Gonzales

35 IBIA 224 (11/03/2000)

Denying reconsideration of:
35 IBIA 207

Judicial review of this case:
Dismissed without prejudice based upon a settlement agreement,
Parton v. Babbitt, CIV 00-2111 L (W.D. Okla. May 24, 2001)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF ARNITA LOIS PARTON
GONZALES

: Order Denying Petitions for
: Reconsideration
:
: Docket No. IBIA 99-68
:
: November 3, 2000

In a decision issued on September 27, 2000, 35 IBIA 207, the Board reinstated an order approving the will of Arnita Lois Parton Gonzales (Decedent), as it was issued by Administrative Law Judge Richard L. Reeh on April 7, 1998.

Decedent's husband, Rudolph Gonzales (Gonzales), has filed a document titled "Motion for Hearing De Nova." The Board treats his filing as a petition for reconsideration of its September 27, 2000, decision. Decedent's brother, Thurman Parton (Parton) has also filed a petition for reconsideration.

Gonzales did not participate in the earlier proceedings in this appeal although he was advised of his right to do so. He was made aware of the issues in the appeal by the filings of the other parties, all of which were served on him. He now attempts to make arguments concerning issues raised by other parties during the course of the appeal. He also discusses other matters, most of which appear unrelated to the appeal.

Gonzales should have made his arguments while the appeal was pending. 43 C.F.R. § 4.315 provides that "[r]econsideration will be granted only in extraordinary circumstances." Extraordinary circumstances do not exist when a party had an opportunity to participate in an appeal and failed to do so. *E.g., Douglas Indian Association v. Juneau Area Director*, 28 IBIA 40 (1995). Therefore, Gonzales' petition for reconsideration must be denied.

Of the arguments Parton makes in his petition for reconsideration, only one warrants discussion. He contends that the Board should "show deference to the Administrative Law Judge Reeh's determination of the credibility of the evidence and the credibility of the witness Rudolph Gonzales." Petition for Reconsideration at 9.

Judge Reeh made no explicit findings concerning the credibility of Gonzales or any other witness. He reached opposite conclusions in his April 7, 1998, order and his March 29, 1999, order as to whether Decedent destroyed her will (as Gonzales testified she did). Thus, to the

extent findings on credibility may be implied from the orders, he made contrary findings concerning credibility in the two orders. The Judge did not address the conflict between the hearing testimony given by Gonzales and the hearing testimony given by Parton. ^{1/} Nor did he address the contradictions in the sworn statements Gonzales made at the hearing and the sworn statements he made in his petition for rehearing. Under these circumstances, there are no findings on credibility to which the Board could have deferred. In any event, as discussed in the Board's September 27, 2000, decision, the problems with Gonzales' credibility were apparent from the written record. The Board rejects Parton's argument that deference was appropriate in this case.

The Board has reviewed Parton's other arguments but finds that they constitute mere disagreement with the Board's decision. Disagreement with a Board decision does not constitute "extraordinary circumstances" under 43 C.F.R. §4.315. E.g., Needles Lodge v. Acting Phoenix Area Director, 31 IBIA 123 (1997).

Parton has not shown that extraordinary circumstances are present here. Therefore, his petition for reconsideration must be denied.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, these petitions for reconsideration are denied.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

^{1/} As noted in the Sept. 27, 2000, decision, 35 IBIA at 211 n.4, Parton's hearing testimony was given against his own self-interest. Had Judge Reeh made explicit findings on witness credibility, he presumably would have taken this fact into account.

Parton has not repudiated his hearing testimony or offered any explanation for the conflict between that testimony and the position he has taken in this appeal.